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Business and Non-Profit Entities Code

At the end of the 2008 regular session of the Alabama legislature, Representative Marcel Black and Senator Rodger Smitherman introduced the *Business and Non-Profit Entities Code*. The 815-page bill was introduced so legislators and others interested in entities laws could become familiar with the act prior to enactment. This bill will be introduced again in February 2009. Efforts are underway to familiarize attorneys with this new reorganization of Title 10. A copy of the act, along with commentary and cross-reference charts, is available on the Law Institute's homepage.

In May 1999, a committee of the Law Institute began its study of all the business entities in Alabama. The study primarily was to clear up inconsistencies between the entities which may be a trap for lawyers and for those with multiple-entity organizations. The Institute Drafting Committee completed its study nine years later, with over 50 meetings held. The committee first drafted the Alabama Entities Conversions and Mergers Act which passed the legislature in 2000 and is now found in *Ala. Code 10-15-1 et seq.*

The bill reorganizes the following types of business entities into one *Code*:

1. Alabama Business Corporation Act;
2. Non-Profit Corporation Act;
3. Alabama Limited Liability Company Act;
4. Alabama Revised Partnership Act;
5. Alabama Revised Limited Partnership Act;
6. Alabama Real Estate Investment Trust Act;
7. Alabama Professional Corporations Act;
8. Alabama Professional Associations Act; and
9. Other existing provisions of Alabama statutes governing domestic and foreign business and non-profit entities.

The reorganization will:

- (1) Rearrange the business and non-business organizations into a more logical order;
- (2) Provide a smooth transition when a business needs to change from one entity to another;

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- (3) Provide a numbering system designed to accommodate future expansion of the law;
- (4) Eliminate repealed, duplicative, expired and other ineffective provisions; and
- (5) Simplify the language of the various acts.

The *Code* is organized on a “hub and spoke” model in Title 10. Article 1, constituting the “hub,” consists of provisions applicable to each of the various business entities. The remaining articles are the “spokes” of the Act and are the individual entities, such as the Business Corporation Act. When possible, each entity will retain its current chapter designation in the “spoke.” For example, business corporation provisions, presently in Chapter 2, will be in Chapter 2 of the new Act. This will make it easier to find for those familiar with the current law.

The purpose of this code is primarily non-substantive. It is to make the law encompassed by this title more accessible and understandable by:

- (1) Rearranging the kinds of business and non-business organizations and the statutes applicable to them into a more logical order by a non-substantive revision of analogous or comparable provisions found in the prior Alabama Business Corporation Act, Alabama Non-Profit Corporation Act, Alabama Limited Liability Company Act, Alabama Revised Partnership Act, Alabama Revised Limited Partnership Act, Alabama Real Estate Investment Trust Act, Alabama Professional Associations Act, Alabama Professional Associations Act, and other existing provisions of Alabama statutes governing domestic and foreign business and non-profit entities;
- (2) Employing a format and numbering system designed to facilitate access to and citation of the law and to accommodate future expansion of the law;
- (3) Eliminating repealed, duplicative, expired, executed, and other ineffective provisions; and
- (4) Restating the law in modern American English to the greatest extent possible.

This bill would add Title 10A, entitled *Alabama Business and Nonprofit Entities Code*, to the *Code of Alabama 1975*. The added title is comprised of sections previously located in Title 10, which are amended and renumbered, and adds additional sections, resulting in a revised, recast and reordered business and nonprofit entities code. Certain sections of Title 10 are also repealed. The *Code* includes hub provisions applicable to the various entities and spoke provisions applicable to a particular type of entity.

The following is taken from the preface to the *Entities Code* written by Professor Howard Walthall, Cumberland School of Law, who is the reporter for this study:

Chapter 1, General Provisions, concerns:

Definitions, applications and purposes; purpose and powers of a domestic entity; formation and governance; filings; names of entities, registered agents and registered offices; indemnification and insurance; foreign entities; conversions and mergers; and winding up and termination of a domestic entity.

Chapter 2, Alabama Business Corporation Law

and applicable portions of Chapter 1, concerns: General provisions; formation and governing documents; purpose and powers; shares and distributions; shareholders; directors and officers; amendment of articles of incorporation; merger and share exchange; sale or mortgage of assets; dissenter's rights; dissolution; foreign corporations; records and reports; and application.

Chapter 3, Alabama Non-Profit Corporation Law

and applicable portions of Chapter 1 concerns: General provisions; substantive provisions; formation of nonprofit corporations; amendments; mergers and consolidation; sale of assets; dissolution; and miscellaneous provisions.

Chapter 4, Alabama Professional Corporation Law

and applicable portions of Chapter 1, concerns: General provisions; purposes, powers and organization; shareholders; directors and officers and professional liability; special provisions as to amendments, merger and consolidation; regulation of professional corporations, foreign professional corporations and application to existing corporations; and limited liability corporations.

Chapter 5, Alabama Limited Liability Company Law

and applicable portions of Chapter 1, concerns: General provisions; formation; relationship of members and managers to third parties; relationship among members; contributions and distributions; transfer of membership interest; dissolution; and professional services.

Chapters 6 and 7 are reserved for future legislation.

Chapter 8, Alabama General Partnership Law

and applicable portions of Chapter 1, concerns: General provisions; nature of partnership; relations of partners to persons dealing with partnerships; relations of partners to each other and to partnership; transferees

and creditors of partners; partners' dissolution; partners' dissolution when business not wound up; winding up partnership business; registered limited liability partnerships; and miscellaneous provisions.

Chapter 9, Alabama Limited Partnership Law and applicable provisions of Chapter 1, concerns: General provisions; certificate of limited partnership; limited partners; general partners; finance; distributions and withdrawals; assignment of partnership interests; dissolutions; derivative actions; and miscellaneous provisions.

Chapter 10, Alabama Real Estate Investment Trust Law and applicable provisions of Chapter 1, concerns: Form; compliance; declaration of trust; classification of shares; removal of trustee powers; investment and use; annual report; inspection of records; filing fees; amendment of declaration; merger; dissolution; liability of trust, shareholders and trustees; service of process; income tax; and treatment.

Chapter 11, Alabama Employee Cooperative Corporations Law and applicable provisions of Chapter 1, concerns: Election as employee cooperative and revocation of election; corporate names; members, membership shares, rights and responsibilities; directors and officers; voting power, amendment of bylaws, protection of shareholders; apportionment of earnings and losses; internal capital accounts; internal capital account cooperatives; and conversion of membership shares and merger of employee cooperatives.

Chapters 12, 13, 14 and 15 are reserved for future legislation.

Chapter 16, Business Trusts, concerns: Establishment and purpose; powers and liabilities of trustees and liability of trust; certificate of ownership and liability of beneficial owners; contents and recording of declaration of trust; duration and suits against trust; and attachment and execution.

Chapter 17, Alabama Unincorporated Non-Profit Association Law and applicable provisions of Chapter 1, concerns: Governance; association as legatee, devisee or beneficiary; statement of authority; liability in tort and contract; capacity to assert and defend and standing effect of judgment or order; disposition of personal property of inactive or dissolved association; appointment of agent; claims, venue and service; transition; and acts not repealed, saving clause and uniformity of application.

Chapters 18 and 19 are reserved for future legislation.

Chapter 20, Special Purpose Entities, concerns: Bishop of diocese; churches, public societies and graveyard owners; conferences of ministers; state conventions and association of churches; educational institutions; healthcare service plans; industrial development corporations; local fraternal orders; single tax and mutual economic associations; private foundations; charters of medical, dental, pharmaceutical or similar associations; charters of corporations not of a business character; retail merchants' associations, wholesale merchants' associations; water and power companies; and liability of officers of non-profit organizations.

Chapter 21, Certain Powers, Rights and Duties of Corporations, concerns: Corporate political contributions; corporate powers of eminent domain; and prosecution of corporations.

Chapters 22 to 29, inclusive, are reserved for future legislation.

Chapter 30, Provisions Applicable to Existing Entities of a Type that May No Longer Be Formed, concerns: Unincorporated professional associations and close corporations.

The drafting committee donated over \$2 million of legal services for this project. The lawyers who undertook this enormous task are:

Professor Jim Bryce, Tuscaloosa
Larry Childs, Birmingham
Rick Clifton, Andalusia
Fred Daniels, Birmingham
Robert Denniston, Mobile
Peck Fox, Montgomery
Charles Grainger, Montgomery
James Hughey, Jr., Birmingham
Gregory Leatherbury, Jr., Foley
Curtis Liles, III, Birmingham
Mark Maloney, Decatur
Thomas Mancuso, Montgomery
Jim Pruett, committee chair, Gadsden
Henry Simpson, Birmingham
Bradley Sklar, Birmingham
Professor Howard Walthall, Birmingham
Robert Walthall, Birmingham

The Uniform Laws Commission has recognized the work of this committee and has obtained the services of Professor Howard Walthall to undertake a similar national drafting project on business and non-profit entities.

To obtain the *Business and Non-Profit Entities Code* and other Institute-drafted legislation, both the filed bill and the ALI draft with Comments, go to www.ali.state.al.us. ▲▼▲